

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company, and The Toledo) Case No. 16-743-EL-POR
Edison Company for Approval of Their)
Energy Efficiency and Peak Demand)
Reduction Program Portfolio Plans for)
2017 through 2019.**

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY’S
MEMORANDUM CONTRA THE APPLICATION FOR REHEARING
BY THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

OCC’s application for rehearing is premised on a fundamental misunderstanding of the Companies’ Economic Load Response Program Rider (“ELR”) and a misinterpretation of R.C. 4903.09. And OCC therefore cannot show, as it must, that the Commission’s December 30, 2020 Entry (the “Entry”) in this proceeding is in any way unreasonable or unlawful.

The Entry ordered two things relevant to OCC’s rehearing application. First, the Commission approved the Companies’ compliance tariffs relating to their energy efficiency and peak demand reduction cost recovery rider, Rider DSE2, setting it to zero subject to final reconciliation, effective January 1, 2021. Case No. 16-743-EL-POR, Entry ¶ 12 (Dec. 30, 2020). Second, the Commission approved the revised charges for Rider DSE1, the Companies’ rider associated with the Rider ELR program. *Id.* Whereas Rider DSE2 recovers, among other things, costs incurred by the Companies associated with the programs implemented to secure compliance with the energy efficiency and peak demand reduction requirements in R.C. 4928.66, Rider DSE1

recovers the Companies' costs associated with customers taking service under Rider ELR.¹ Rider DSE1 and Rider DSE2 are thus distinct, serving two separate purposes. The Companies' Rider ELR is authorized under the Companies' fourth electric security plan ("ESP IV"), and not an energy efficiency or peak demand reduction program authorized under the Companies' energy efficiency and peak demand reduction portfolio plans for compliance with the energy efficiency and peak demand reduction requirements in R.C. 4928.66.

Despite this, OCC's first assignment of error asserts that the Commission erred by not also setting Rider DSE1 to zero, pursuant to R.C. 4928.66(G)(3), which mandates the termination of all cost recovery mechanisms authorized by the Commission for compliance with energy efficiency and peak demand reduction mandates. OCC Application for Rehearing, at 2–4 (Jan. 29, 2021) ("AFR"). This argument is based on the mistaken premise that Rider ELR's purpose is to secure the Companies' compliance with the energy efficiency mandates. OCC also argues, in its second assignment of error, that the Commission's order violates R.C. 4903.09 because it does not provide sufficient explanation for its decision. AFR at 4. Contrary to OCC's characterization of the Commission's Entry, the Commission explained the difference between Rider DSE1 and DSE2, and accordingly set Rider DSE2 to zero in compliance with R.C. 4928.66(G). Entry at ¶¶ 10, 12.

For these reasons and those further explained below, OCC's Application for Rehearing should be denied in its entirety.

¹ Ohio Edison Company, PUCO No. 11, Sheet 115, 26th Revised Page 1 of 3; The Cleveland Electric Illuminating Company, PUCO No. 13, Sheet 115, 26th Revised Page 1 of 3; The Toledo Edison Company, PUCO No. 8, Sheet 115, 26th Revised Page 1 of 3.

II. ARGUMENT

A. OCC's Assignment of Error 1 Is Without Merit Because R.C. 4928.66(G)(3) Does Not Require Rider DSE1 To Be Set To Zero.

OCC asserts that the Commission erred by allowing the Companies to continue recovering costs associated with Rider ELR through Rider DSE1. According to OCC, Rider ELR “is a peak demand reduction program that FirstEnergy used to meet the now-terminated peak demand reduction mandates,” and all energy efficiency charges must end under R.C. 4928.66(G)(3). AFR at 2.

But OCC's arguments are based on the incorrect premise that Rider ELR's purpose is to secure the Companies' compliance with the energy efficiency and peak demand reduction requirements. To the contrary, Rider ELR exists separate and apart from the Companies' energy efficiency and peak demand reduction programs. Indeed, the Commission approved Rider ELR in the Companies' ESP IV, Case No. 14-1297-EL-SSO, rather than in the Companies' energy efficiency and peak demand reduction portfolio proceeding, Case No. 16-743-EL-POR.² Further, ESP IV as approved by the Commission specified that the Rider ELR credits “will be recovered through the DSE1 component of Rider DSE” through the term of ESP IV.³ Accordingly, while the Companies' energy efficiency and peak demand reduction programs have terminated, Rider ELR and associated cost recovery through Rider DSE1 continues through the term of ESP IV, pursuant to the Commission's authorization in ESP IV. Because the Companies did not implement Rider ELR to secure compliance with the energy efficiency and demand reduction requirements, R.C. 4928.66(G)(3) does not apply.

² See ESP IV Stipulation and Recommendation, Section V.A.1.i; ESP IV Third Supplemental Stipulation and Recommendation, Section V.G.4.a.i.

³ Case No. 14-1297-EL-SSO, Opinion and Order (March 31, 2016), at 26.

For these reasons, OCC's first assignment of error must be denied.

B. The Commission's Entry Provides Sufficient Explanation For Approving Rider DSE1.

OCC's second assignment of error is likewise misguided. OCC argues that the Commission violated R.C. 4903.09 by failing to provide sufficient explanation for allowing the Companies "to continue charging customers for a peak demand response despite the prohibition under R.C. 4928.66(G)(3)." AFR at 4. But OCC misreads R.C. 4903.09 and ignores the Commission's explanation.

R.C. 4903.09 requires only that the Commission provide sufficient details for a reviewing court "to determine, upon appeal, how the commission reached its decision" and "enough evidence and discussion in order to enable the PUCO's reasoning to be readily discerned." *Cleveland Electric Illuminating Co. v. Pub. Util. Comm.*, 4 Ohio St. 3d 107, 110 (1983). In other words, the Commission has to provide the court "with an adequate record to understand the commission's rationale underlying its decision on appeal." *Elyria Foundry Co. v. Pub. Util. Comm.*, 118 Ohio St. 3d 269, 2008-Ohio-2230, 888 N.E.2d 1055, ¶ 36. For example, where the Commission points out "all that [is] needed to reject [an] argument"—this is sufficient for the purposes of R.C. 4903.09. *Id.* ¶¶ 35–36.

The Commission did just that here. Its Entry explains that Rider DSE is comprised of not one but two components. One is Rider DSE2, which, as the Commission explained, recovers, among other things, the costs for compliance under R.C. 4928.66. Entry ¶ 10. Therefore, the Commission set Rider DSE2 to zero pursuant to R.C. 4928.66(G)(3). The other is Rider DSE1 which, the Commission explained, "is associated with FirstEnergy's Economic Load Response Program..." Entry ¶ 10. Thus, the Commission did not set Rider DSE1 to zero because Rider DSE1 does not recover the Companies' costs for compliance with R.C. 4928.66. No further

explanation is necessary to “understand the commission’s rationale.” *Elyria*, 2008-Ohio-2230, ¶ 36.

Accordingly, OCC’s second assignment of error should be denied.

III. CONCLUSION

For all these reasons, the Commission should reject OCC’s rehearing application in its entirety.

Dated: February 8, 2021

Respectfully submitted,

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On behalf of the Companies

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on February 8, 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Ryan A. Doringo
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Summary: Memorandum Contra the Office of the Ohio Consumers' Counsel's Application for Rehearing electronically filed by Ryan A Doringo on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company